IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.9672 OF 2004

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRAHLADBHAI FULABHAI BRAHMBHATT

Versus

THE EMPLOYEES' PROVIDENT FUND COMMISSIONER & ANR.

Appearance:

1. Special Civil Application No. 9672 of 2004

MR. M.A. KHARADI for Petitioner

MR. M.S. RAO for Respondent No. 1

MS. SEJAL K. MANDAVIA for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 11/10/2004

ORAL JUDGEMENT

1. Rule.

Mr.M.S.Rao, learned Advocate, and Ms.Sejal K.Mandavia, learned Advocate, appear and waive service of Rule on behalf of respondent no. 1 and 2 respectively.

2. By order dated 29th September, 2004, respondent no.1 was directed to place on record for perusal the original documents, namely, Form No.3-EPF and Form No.2, if available with the authorities. Mr.Rao, learned Advocate for respondent no.1, made available Form No.3-EPF and Ms.Sejal Mandavia, learned Advocate, made available Form No.2. Both the Forms are perused and are returned to the respective authorities for necessary action in the matter.

3. The petitioner, a retired employee of the Gujarat State Road Transport Corporation (hereinafter referred to as "the GSRTC" for short) is before this Court praying that:

> "Admit and allow present petition by issuing a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus or any other appropriate writ, order or direction directing the respondent No.1 to start paying the pension to the petitioner forthwith, with effect from March, 2002, in the interest of justice."
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> (emphasis supplied)

4. The petition is affirmed on 26th July, 2004 and filed on 5th August, 2004. In response to the Notice issued by this Court on 10th August, 2004, Mr.M.S.Rao, learned Advocate appearing for respondent no.1, Employees Provident Fund Commissioner, has filed Reply Affidavit affirmed by Mr.M.H.Shukla, Assistant Provident Fund Commissioner (Legal) in the Office of Regional Provident Fund Commissioner, Gujarat Region. The case of respondent no.1 is that it acts only on the basis of the record furnished to it; that in Form No.3 - EPF, which is the basic document, the date of birth of the petitioner is shown to be 21.2.1949 and only on that basis, the petitioner can be granted the pension.

5. Irony is that the date of birth of the petitioner in the record of respondent no.2, the GSRTC, is recorded as 21.2.1944 and on the basis of that date of birth, he is retired from service. Only on account of the mistake/error having crept in furnishing the details to the Provident Fund Commissioner, the petitioner is suffering for the present. Though he is retired in year 2002, he is without pension. The respondent no.1 is right in its submission that they are acting on the basis of the record furnished to it. A mistake has crept in during the correspondences and on account of that, the petitioner is suffering and undergoing agony. The

present petition is partly allowed. The respondent no.1 is directed to undertake necessary formalities of correcting its record on the basis of fresh information supplied by respondent no.2-GSRTC. In the meantime, respondent no.1 is directed to treat 21.02.1944 as the date of birth of the petitioner for all purposes and start paying him the pension, while keeping the working of arrears, pending regular pension shall be paid as early as possible, but, not later than 31st December, 2004.

The respondent no.2 is directed to furnish the original Form No.2, retaining a certified copy with them, to the Provident Fund Commissioner. The learned Counsel for the Provident Fund Commissioner states, will be sent to Delhi. The respondent no.2 shall extend full cooperation to the Provident Fund Commissioner so as to see that the aforesaid time frame is observed.

Rule is made absolute. No order as to costs.

Direct Service is permitted.

(Ravi R. Tripathi, J.)
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